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Supreme Court of the United States

October Term, 1973.

No. 731300.

MICHAEL KOZEMCHAK, PHILIP PRONZEN and ARCHADY LEHACK, as The Board of Trustees of St. Andrew's Ukrainian Orthodox Church of Bridgeport, Connecticut,

Petitioners,

against

THE UKRAINIAN ORTHODOX CHURCH OF AMERICA and THE MOST REVEREND BISHOP ANDREI KUSCHAK, Ruling Bishop of the Ukrainian Orthodox Church of America,

Respondents.

Brief in Opposition to Petitioners' Prayer for a Writ of Certiorari.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 731300

MICHAEL KOZEMCHAK, PHILIP PRONZEN and ARCHADY LEHACK, as The Board of Trustees of ST. ANDREW'S UKRAINIAN ORTHODOX CHURCH OF BRIDGEPORT, CONNECTICUT,

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Respondents.

Brief in Opposition to Petitioners' Prayer for a Writ of Certiorari.

Respondents The Ukrainian Orthodox Church of America and The Most Reverend Bishop Andrei Kuschak, Ruling Bishop of The Ukrainian Orthodox Church of America, present herewith their brief in opposition.

Statement.

The lawsuit was tried on December 6 and December 7, 1972, before the Honorable John F. Dooling, Jr., in the United States District Court, Eastern District of New York.

Petitioners (plaintiffs therein), sued on a complaint that alleged four (4) separate causes of action.

After trial, the District Court concluded that petitioners (plaintiffs therein) could not prevail in the action (Appendix B, 27a).

The Court of Appeals for the Second Circuit affirmed the District Court "for substantially the reasons given in the memorandum of the District Court" (Appendix A, 2a).

Reasons for Denying the Writ.

1. Petitioners failed to establish their first cause of action (Appendix B, 24a) and the District Court's factual determination that petitioners have failed to meet their burden of proof does not come within the purview of Rule 19, Supreme Court Rules or any of the considerations contained therein governing review on certiorari.

2. Petitioners failed to establish their second cause of action (Appendix B, 24a) and the District Court's factual determination that petitioners have failed to meet their burden of proof does not come within the purview of Rule 19, Supreme Court Rules or any of the considerations contained therein governing review on certiorari.

3. Petitioners failed to establish their third cause of action (Appendix B, 26a) and the District Court's factual determination that petitioners have failed to meet their burden of proof does not come within the purview of Rule 19, Supreme Court Rules or any of the considerations contained therein governing review on certiorari.

4. Petitioners failed to establish their fourth cause of action (Appendix B. 26a) and the District Court's factual determination that petitioners have failed to meet their burden of proof does not come within the purview of Rule 19, Supreme Court Rules or any of the considerations contained therein governing review on certiorari.

5. The respondent, The Ukrainian Orthodox Church of America, is a hierarchal organization, and the petitioners, at best, are part of that organization and subservient to it.

Respondents, in the light of declining participation by, and in the absence of revenue from the group represented by petitioners, elected not to allocate funds for a new church (Appendix B, 5a, 22a).

Equally influential in this decision was the additional factor of the proximity of nearby St. Mary's Ukrainian Orthodox Church, also in Bridgeport, Connecticut (Appendix B, 23a).

First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. A civil court that undertakes to resolve a purely ecclesiastical dispute, places in hazard the free development of religious doctrine and practice and further poses the threat of implicating secular interests in matters of purely ecclesiastical concern. ***Presbyterian Church in the United States vs. Mary Elizabeth Blue Hill Memorial Presbyterian Church***, 393 U. S. 440 (1969), ***Kedroff vs. St. Nicholas Cathedral***, 344 U. S. 94 (1952), ***Maryland and Virginia Eldership of the Churches of God vs. Church of God at Sharpsburg, Inc.***, 396 U. S. 367 (1970).

Conclusion.

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be denied.

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